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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---x

DAVID NORKIN

Plaintiff,

-against-

DLA PIPER RUDNICK GRAY CARY LLP,

Defendant.

---x

Civil Action No. 05 Civ. 9137(DC)

STATEMENT OF UNDISPUTED FACTS

Pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, defendant DLA Piper Rudnick Gray Cary LLP ("Piper") submits this Statement of Undisputed Facts to accompany its Motion to Dismiss or, Alternatively, for Summary Judgment:

1. At the outset of his bankruptcy case in January 1997, plaintiff David Norkin ("Norkin") filed a schedule in which he listed the shares in Britestarr Homes, Inc. ("Britestarr"), as an asset of his estate. Memorandum of Law in Support of Defendant's Motion to Dismiss or, Alternatively, for Summary Judgment ("Memorandum"), Ex. D.

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2. On May 22, 2002, the United States Bankruptcy Court for the District of Connecticut converted Norkin's case from a Chapter 11 case to a Chapter 7 case. Memorandum, Ex. M.

3. On May 22, 2002, the United States Bankruptcy Court for the District of Connecticut appointed a Chapter 7 trustee for Norkin. Memorandum, Ex. N.

4. On October 27 and October 28, 2004, Norkin was deposed in the case of Britestarr Homes, Inc. v. Piper Rudnick LLP, Civil Action No. 3:05-cv-796-SRU, in the United States District Court for the District of Connecticut. See Memorandum, Ex. A.

5. At his deposition in the Britestarr case, Norkin was represented by his personal bankruptcy counsel. Memorandum, Ex. A.

6. Britestarr's counsel took an active role in defending Norkin's deposition in the Britestarr bankruptcy case. See Memorandum, Ex. A.

7. Just before his deposition in the Britestarr case, Norkin and his lawyers entered into a "joint prosecution agreement" with Britestarr's counsel. Memorandum, Ex. O.

8. At his deposition in the Britestarr case, Norkin testified that the law firm of Piper Piper Rudnick LLP ("Piper") represented Britestarr in the transactions alleged in his complaint. Memorandum, Ex. A, pp. 149-50.

9. At his deposition in the Britestarr case, Norkin testified that Piper represented him individually only in connection with a will for himself and his wife. Memorandum, Ex. A., pp. 149-50.

10. Piper represented Norkin individually only in connection with the drafting of a will for himself and his wife. Memorandum, Ex. A., pp. 149-50.

11. There is no evidence that Piper ever entered into a written retention agreement with Norkin for legal services concerning a dispute with ABB Equity Ventures, Inc. ("ABB").

12. There is no evidence that Piper ever entered into a written retention agreement with Norkin for legal services concerning a dispute over the ownership of Britestarr.

13. There is no evidence that Norkin ever paid any legal fees to Piper for legal services concerning a dispute with ABB Equity Ventures, Inc.

14. Piper entered into formal, written retention agreements with Britestarr, but not with Norkin. Memorandum, Ex. E; Memorandum, Ex. L.

15. ABB made a series of settlement proposals in early 2001. See, e.g., Memorandum, Ex. F; Memorandum, Ex. H; Memorandum, Ex. I.

16. ABB formally withdrew its last written proposal on March 13, 2001. Memorandum, Ex. J.

17. There is no evidence that ABB ever made another specific settlement proposal after March 13, 2001.

18. Norkin has testified that he regarded a January 2001 settlement proposal from ABB as an "abomination" and a "joke." Memorandum, Ex. A [Norkin Depo.] at 169-70.

19. Norkin regarded a January 2001 settlement proposal from ABB as an "abomination" and a "joke." Memorandum, Ex. A [Norkin Depo.] at 169-70; Memorandum, Ex. F.

20. In reviewing ABB's January 2001 settlement proposal, Norkin wrote "no," "no," and "out" in the margins beside the many terms that he regarded as "unacceptable."

Memorandum, Memorandum, Ex. A [Norkin Depo.] at 170; Memorandum, Ex. F; see also Memorandum, Ex. A [Norkin Depo.] at 171-72.

21. Referring to ABB's January 2001 settlement proposal, Norkin testified that "the whole thing was a deal breaker." Memorandum, Ex. A [Norkin Depo.] at 171; see Ex. B [Fenton Depo.] at 103.

22. Norkin regarded everything in ABB's January 2001 settlement proposal as "a deal breaker." Memorandum, Ex. A [Norkin Depo.] at 171; see Memorandum, Ex. B [Fenton Depo.] at 103.

23. Norkin testified that he "would never have signed" ABB's January 2001 settlement proposal. Memorandum, Ex. A [Norkin Depo.] at 170.

24. Norkin "would never have signed" ABB's January 2001 settlement proposal. Memorandum, Ex. A [Norkin Depo.] at 170.

25. Norkin responded to ABB's January 2001 settlement proposal by sending ABB's project manager a handwritten note, stating: "HA; HA; Best regards to all[.]" Memorandum, Ex. G.

26. Commenting on the handwritten note that he sent in response to ABB's January 2001 settlement proposal, Norkin explained that it "was short for saying FU." Memorandum, Ex. A [Norkin Depo.] at 170.

27. Upon reviewing ABB's written proposal of March 12, 2001, Norkin testified that "none of this would be acceptable." Memorandum, Ex. A [Norkin Depo.] at 179.

28. None of the provisions in ABB's written proposal of March 12, 2001, would have been acceptable to Norkin. Memorandum, Ex. A [Norkin Depo.] at 179.

29. Norkin testified that he "would have rejected" ABB's written proposal of March 12, 2001. Memorandum, Ex. A [Norkin Depo.] at 181.

30. Norkin "would have rejected" ABB's written proposal of March 12, 2001. Memorandum, Ex. A [Norkin Depo.] at 181.

31. Commenting on the terms of ABB's written proposal of March 12, 2001, Norkin testified that "this whole thing was not acceptable." Memorandum, Ex. A [Norkin Depo.] at 179.

32. ABB's written proposal of March 12, 2001, was not acceptable to Norkin. Memorandum, Ex. A [Norkin Depo.] at 181.

33. Norkin testified that he was "furious" that ABB brought suit against Britestarr in March 2001. Memorandum, Ex. A [Norkin Depo.] at 186.

34. Norkin was "furious" that ABB brought suit against Britestarr in March 2001. Memorandum, Ex. A [Norkin Depo.] at 186; Memorandum, Ex. B [Fenton Depo.] at 113-15.

35. One of Britestarr's lawyers, Mitchell Fenton, testified that it "inflamed" Norkin that ABB tried to have him held in contempt in the lawsuit that ABB launched against Britestarr. Memorandum, Ex. B [Fenton Depo.] at 114.

36. It inflamed Norkin that ABB tried to have him held in contempt in the lawsuit that ABB launched against Britestarr. Memorandum, Ex. B [Fenton Depo.] at 114; see Memorandum, Ex. A [Norkin Depo.] at 190-91.

37. One of Britestarr's lawyers, John Nonnenmacher, testified that Norkin "hated" ABB. Memorandum, Ex. C [Nonnenmacher Depo.], at 146-47.

38. Norkin hated ABB. Memorandum, Ex. C [Nonnenmacher Depo.], at 146-47.

39. Norkin testified that ABB had defrauded him. Memorandum, Ex. A [Norkin Depo.] at 139.

40. Norkin believed that ABB had defrauded him. Memorandum, Ex. A [Norkin Depo.] at 139.

41. Norkin testified that ABB's project manager, Steven Smith, had lied to him on many occasions. Memorandum, Ex. A [Norkin Depo.] at 143-44.

42. Norkin believed that ABB's project manager, Steven Smith, had lied to him on many occasions. Memorandum, Ex. A [Norkin Depo.] at 143-44.

43. Norkin believed that ABB no longer had any enforceable rights after its three-year option expired at the end of 2001. Memorandum, Ex. A [Norkin Depo.] at 195-96.

44. One of Britestarr's lawyers, John Nonnenmacher, testified that Norkin believed that ABB was trying to steal what it could not buy. Memorandum, Ex. C [Nonnenmacher Depo.] at 146-47.

45. Norkin believed that by instigating what his complaint calls the "ownership dispute," ABB was trying to steal what it could not buy. See Memorandum, Ex. C [Nonnenmacher Depo.] at 146-47.

46. Norkin told one of Britestarr's lawyers, Vincenzo Paparo, that it was "imperative that [Britestarr] institute a damage suit against ABB as soon as possible." Memorandum, Ex. A [Norkin Depo.] at 199; Memorandum, Ex. K.

Dated: New York, New York
November 7, 2005

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S/______________________________
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